

CORRECTED REPRINT
HOUSE No. 4638

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, January 19, 2006.

The committee on Labor and Workforce Development, to whom were referred the petition (accompanied by bill, Senate, No. 1094) of John A. Hart, Jr., Christopher G. Fallon, Lida E. Harkins, Robert M. Koczera and other members of the General Court for legislation relative to child labor reform, the petition (accompanied by bill, Senate, No. 1121) of Richard R. Tisei for legislation to increase the fines for violations of child labor laws, the petition (accompanied by bill, House, No. 3769) of Thomas M. Petrolati and others relative to hours of employment in food stores for persons between the ages of sixteen and eighteen, the petition (accompanied by bill, House, No. 3785) of Theodore C. Speliotis relative to the reporting by physicians of certain information concerning child labor laws in the Commonwealth, the petition (accompanied by bill, House, No. 3790) of Patricia D. Jehlen and others to provide for written warnings and civil citations relative to the child labor laws, and the petition (accompanied by bill, House, No. 3802) of Peter J. Larkin and others relative to the child labor laws in the Commonwealth, reports recommending that the accompanying bill (House, No. 4638) ought to pass.

For the committee,

MICHAEL J. RODRIGUES.

The Commonwealth of Massachusetts

In the Year Two Thousand and Six.

AN ACT RELATIVE TO CHILD LABOR.

1 *Whereas*, The deferred operation of this act would tend to
2 defeat its purpose which is to protect certain children in the labor
3 force, therefore it is hereby declared to be an emergency law, nec-
4 essary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 62 of chapter 149 of the General Laws, as
2 appearing in the 2004 Official Edition, is hereby amended by
3 inserting after the word “elevator”, in line 25, the following
4 words:— ; or (16) in any job or occupation requiring the posses-
5 sion or use of a firearm.

1 SECTION 2. Said chapter 149 is hereby further amended by
2 striking out section 66, as so appearing, and inserting in place
3 thereof the following section:—

4 Section 66. No person shall employ a child under 18 or permit
5 such child to work in, about or in connection with any establish-
6 ment or occupation before 6:00 A.M. or after 10:00 P.M.; pro-
7 vided, however, that minors under 18 may be employed as
8 operators in regular service telephone exchanges or telegraph
9 offices until, but not after, 11:30 P.M.; and provided, further, that
10 minors 16 or 17 years of age may be employed until, but not after,
11 11:30 P.M. on any night other than a night preceding a regularly
12 scheduled school day. Notwithstanding the provisions of this
13 section, any establishment for which the close of business occurs
14 at 10:00 P.M., evidenced by proof of the time at which clients or
15 customers are no longer invited to patronize said establishment,
16 may employ a minor employee until, but not after, 15 minutes past
17 the hour of 10:00 P.M. without risk of penalty. No person shall
18 employ a minor under the age of 18 or permit such a minor to

19 work in, about or in connection with any establishment or occupa-
20 tion after 8:00 P.M. unless such minor is under the direct and
21 immediate supervision of an adult. For the purposes of this
22 section, the requirement of direct and immediate supervision may
23 be satisfied by the presence of a person 18 years of age or older
24 acting in a supervisory capacity, who is situated in the workplace
25 and is reasonably accessible to the minor employee.

1 SECTION 3. Said chapter 149 is hereby further amended by
2 inserting after section 78 the following section:—

3 Section 78A. As an alternative to initiating criminal proceed-
4 ings to enforce any violation of sections 56 to 104, inclusive, or a
5 violation of this chapter for improperly employing a minor for
6 which a criminal penalty is provided, the attorney general may at
7 his discretion issue a written warning or a civil citation to the
8 person responsible for such violation. Such a citation may require
9 a person to comply immediately with sections 56 to 104, inclu-
10 sive, and for each violation, a civil penalty of not more than \$250
11 for the first offense; \$500 for the second offense; and \$2,500 for
12 the third and each subsequent offense. When determining the total
13 number of prior offenses under this section, the attorney general
14 shall include all offenses committed per establishment location
15 during the previous three years beginning on the date this section
16 takes effect. A person cited shall make full payment of the penalty
17 amount specified herein to the commonwealth within 21 days of
18 its date of the citation. For purposes of this section, each instance
19 in which a minor is required or permitted to work in violation of
20 sections 56 to 104, inclusive, shall be deemed a separate violation.
21 Nothing in this section shall limit the remedies contained in
22 section 27C.

23 Any person aggrieved by a citation issued pursuant to this
24 section may appeal said citation by filing a notice of appeal with
25 the attorney general and the division of administrative law appeals
26 within 15 calendar days of the date of issuance of said citation.
27 Any such appellant shall be granted a hearing before the division
28 of administrative law appeals in accordance with chapter 30A.
29 The hearing officer may affirm, or if the aggrieved person demon-
30 strates by a preponderance of evidence that the citation or order
31 was erroneously issued, vacate, or modify the citation. Any person

32 aggrieved by a decision of said hearing officer may file an appeal
33 in the superior court pursuant to the provisions of said chapter 30A.

34 If any civil penalty imposed by a citation or order issued by the
35 attorney general remains unpaid beyond the time period specified
36 for payment such penalty amount, together with interest thereon at
37 the rate of 18 per cent per annum, shall be a lien upon the real
38 estate and personal property of the person who has failed to pay
39 such penalty. Such lien shall take effect by operation of law on the
40 day immediately following the due date for payment of such fine,
41 and, unless dissolved by payment, shall as of said date be consid-
42 ered a tax due and owing to the commonwealth, which may be
43 collected through procedures provided for by chapter 62C. In
44 addition to the foregoing, no officer of any corporation which has
45 failed to pay any penalty may incorporate or serve as an officer in
46 any corporation which did not have a legal existence as of the date
47 said fine became due and owing to the commonwealth.

48 The failure of any person to comply with any citation issued by
49 the attorney general under this section or to pay any civil penalty
50 imposed thereby within 21 days of the date of the issuance of such
51 citation, or within 30 days following a decision of the hearing
52 officer if such citation has been appealed, excluding any time
53 during which judicial review of the hearing officer's decision
54 remains pending, shall entitle the attorney general to apply for a
55 criminal complaint or seek indictment against the violator for the
56 violation for which the citation was issued, or, in the alternative,
57 to enter a civil complaint in the district or superior court to
58 enforce payment of the citation. The attorney general shall not be
59 required to pay a filing fee. In applying for such criminal com-
60 plaint, the attorney general shall be entitled to seek all remedies
61 and penalties provided for the violation under this chapter.

1 SECTION 4. The first paragraph of section 86 of said chap-
2 ter 149, as appearing in the 2004 Official Edition, is hereby
3 amended by striking out the first sentence and inserting in place
4 thereof the following sentence:—

5 No person shall employ a child under the age of 18, other than
6 a child over the age of 14 granted an employment permit by the
7 superintendent of schools when such superintendent determines
8 that the welfare of such child will be better served through the
9 granting of such permit, in any place of employment, other than

10 street trades as defined in sections 69 to 73, inclusive; provided,
11 however, that students over 14 in co-operative courses in public
12 schools may be employed by any co-operating establishment as
13 defined by section 1 upon securing from the superintendent of
14 schools a permit covering any such co-operating employment.

1 SECTION 5. Said section 86 of said chapter 149, as so appear-
2 ing, is hereby amended by striking out, in lines 19 and 20, the
3 words “The person employing a child between fourteen and six-
4 teen” and inserting in place thereof the following:— Any person
5 employing a child between 14 and 18.

1 SECTION 6. Said section 86 of said chapter 149, as so appear-
2 ing, is hereby further amended by striking out, in line 22, the
3 words “department of labor and industries” and inserting in place
4 thereof the following:— office of the attorney general.

1 SECTION 7. Section 87 of said chapter 149, as so appearing, is
2 hereby amended by inserting after the word “employment”, in
3 line 5, the following words:— or the town where the child attends
4 school.

1 SECTION 8. Said section 87 of said chapter 149, as so appear-
2 ing, is hereby further amended by inserting after the word
3 “promise”, in line 17, the following words:— , signed by the
4 prospective employee and his parent or guardian.

1 SECTION 9. Said section 87 of said chapter 149, as so appear-
2 ing, is hereby further amended by inserting after the word
3 “chapter”, in line 22, the following words:— which is summarized
4 on the pledge or promise form.

1 SECTION 10. Said section 87 of said chapter 149, as so
2 appearing, is hereby further amended by striking out, in line 24,
3 the words “such child” and inserting in place thereof the words:—
4 a child under the age of 16.

1 SECTION 11. Said section 87 of said chapter 149, as so appear-
2 ing, is hereby further amended by inserting after the word “there-
3 under”, in line 25, the following words:— ; and evidence that a

4 minor between 16 and 18 meets the requirements for the comple-
5 tion of the sixth grade of the public schools of the town in which
6 he resides.

1 SECTION 12. The second paragraph of said section 87 of said
2 chapter 149, as so appearing, is hereby amended by striking out
3 paragraph (3) and inserting in place thereof the following para-
4 graph:—

5 (3) For children under the age of 16, a certificate, signed within
6 the previous 12 months, by a school or family physician, or by a
7 physician appointed by the school committee, stating that the
8 child has been thoroughly examined by said physician, and in his
9 opinion is in sound health.

1 SECTION 13. Section 89 of said chapter 149, as so appearing,
2 is hereby amended by striking out, in lines 27 and 28, the word
3 “sixteen” and inserting in place thereof the following figure:— 18.

1 SECTION 14. Section 94 of said chapter 149, as so appearing,
2 is hereby amended by striking out, in line 5, the words “or educa-
3 tional certificate”.

1 SECTION 15. Section 94 of said chapter 149, as so appearing,
2 is hereby amended by striking out, in lines 6 and 7, the words “for
3 which permits for employment or educational certificates are
4 required”.

1 SECTION 16. Said chapter 149 is hereby further amended by
2 striking out section 95, as so appearing, and inserting in place
3 thereof the following section:—

4 Section 95. If a minor over 16 and under 18 fails to meet the
5 requirements for the completion of the sixth grade, no person shall
6 employ such minor while a public evening school is maintained in
7 the town where the minor resides or in the town of employment if
8 he is authorized to attend a public evening school therein, unless
9 such minor is a regular attendant at such evening school or at a
10 day school and presents to his employer each week a school
11 record of such attendance. When such record shows unexcused
12 absences, such attendance shall be deemed to be irregular and

13 insufficient. The person authorized to issue permits for employ-
14 ment, or teachers acting on his authority, may, however, excuse
15 justifiable absence or waive the school attendance requirements if
16 in the opinion of the school physician the physical or mental con-
17 dition of a minor is such as to render attendance harmful or
18 impracticable.

1 SECTION 17. Section 95A of said chapter 149, as so appear-
2 ing, is hereby amended by striking out, in line 4, the words “cer-
3 tificate required by section ninety-five” and inserting in place
4 thereof the following:— permit for employment required by
5 section 86.

1 SECTION 18. Section 97 of said chapter 149 is hereby repealed.

1 SECTION 19. Section 98 of said chapter 149 is hereby repealed.